STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

July 9, 1965
Education

Kermit S. Nickerson, Deputy Commissioner

Reference to Repealed Statute by Member Towns in a School Administrative District Vote.

FACTS:

On May 26, 1965 the directors of School Administrative District No. 39 issued their warrant calling for a district meeting for the purpose of voting "by secret ballot on the following questions in accordance with Chapter 90-A, section 37 to 39, of the Revised Statutes of Maine * * *." The warrant next set forth the two questions to be voted upon. Both questions were of like tenor: Whether the directors shall be authorized to issue bonds or notes (in a stated amount) for specified capital outlay purposes. Following the issuance of the reference warrant, the three member towns of the District issued their separate warrants calling for the holding of town meetings. Each of the towns' warrants borrowed the language which was set forth in the director's warrant; and the official ballots in the three town meetings followed suit. The total vote of the district favored each of the questions (124 yes, 13 no); and the district directors have contacted a Maine bank for the purpose of acquiring the moneys on notes to be executed by the district. The lending institution has questioned the validity of the district vote since the reference warrants and the ballots referred to a portion of the Maine Revised Statutes which was repealed prior to the dates of the warrants. (See: "An Act to Revise and Consolidate the Public Laws of the State," Vol. 16 of the Maine Revised Statutes (1964), pages 873 and 874; and "An Act to Repeal the Acts Consolidated in the Revised Statutes of the Year One Thousand Nine Hundred and Sixty-Four," supra, pages 875 through 882.)

A school administrative district's expenditure of moneys for a capital outlay purpose qualifies for state aid. *20 M.R.S.A. § 3518.*

QUESTION:

Whether the reference recital of the repealed statute renders the district vote illegal?

ANSWER:

No.

REASON:

At the time the reference warrants were issued by the directors and by the towns, there was no "Chapter 90-A, section 37 to 39" in the Maine Revised Statutes. The subject statute had been repealed, earlier, by legislative enactment; and replaced by 30 M.R.S.A. § 2061-2066. A reading of both the former and the latter statutory provisions reveal that the new law is but a continuance of the old law. If the several warrants, and the ballots had contained the present recital of the statutes, the reference question of validity would be nonexistent. It remains to be seen, then, whether the references to the former statute, rather than to the present statute (they both being identical in language), render the subject vote illegal.

In *Foreman v. Dorsey,* 256 Ala. 253, 54 So. 2d 499, the plaintiff's complaint (pleading) designated a provision of law which did not apply to the case. The appellate court held that this was not a fatal error in view of the fact that there was a law which did apply to the case. Too, the court said that it was improper for a litigant to so designate the law governing his suit; and to do so amounted to legislating. While *Foreman v. Dorsey,* supra, may not be identical, factually, with the present matter, its principle may be useful. Here, as there, a provision of law "does apply and is controlling." It is *30 M.R.S.A. § 2061-2066.*

It has been decided that a petition for a referendum is not invalidated because it incorrectly described the election procedure to be utilized for the submission of the question to the electors, where the statutes do not require that any such description be included in the referendum petition itself. *State ex rel. Tietje v. Collett,* 138 Ohio St. 425, 35 N.E. 2d 568.

In *State ex rel. v. Quarterly County Court,* (Tenn.), 351 S.W. 2d 390 (an action testing the validity of a school bond referendum), the statutory ten days' notice was not given. Instead, eight days' strict legal notice of the election was given, coupled with general newspaper coverage. Held: There was substantial compliance with the law.

> "This Court has expressed on several occasions that it will not permit trifling irregularities to defeat the will of the majority expressed at the polls." *Supra, 351 S.W. 2d 391.*

In the present case, no one was prejudiced or damaged by the reference to the earlier statute.

In *State ex rel. Dore v. Superior Court for King County,* (Wash.) 18 P. 2d 51, the notice of the election (and the ballots) designated the office to be filled as follows: "One (1) justice of the peace for Seattle Precinct 2-year term." The term of the office should have been for an "unexpired term". In upholding the election as valid, the court examined the statutes and found that they made "no mention as to the term." 18 P. 2d 52. The Court went on to state the following:

> "It is the general rule that an election will not be set aside for a mere informality or irregularity which cannot be said in any manner to have affected the result thereof, and that a literal compliance with the statute requiring notice is not essential to the validity of an election." Supra. *18 P. 2d 52.*

See the case of *Bramley v. Miller,* (New York) 1 N.E. 2d 111, where a school district vote was sustained by the courts when only fourteen applicants had requested that a district meeting be held, although the statute required fifteen applicants' signatures.

One might consider the case of *In re Cleveland,* (N.J.) 19 A. 17, to be in point. There, a misrecital of some of the provisions of an Act occurred in the proclamation of the election. Of this the Court said that the election was not devoid of legal effect. The Court reasoned that since the Act had not required the insertion of the citation into the proclamation, and since the error had no effect on the election, there was no existing error of law.

In conclusion, the district's vote in the instant case has not been rendered invalid by reason of the presence of the reference statutory citation, i.e., "Chapter 90-A, Section 37 to 39, of the Revised Statutes of Maine." We are prompted to reach this conclusion for several reasons. First, the citation is surplus language. Note that the article in which the language appears (Art. 2), recites that the vote is to be "by secret ballot." The subject citation, were it effective law, would not have extended or modified those words. We are, therefore, not faced with a situation wherein a statutory reference stands alone, and is required to speak for itself. Second, neither the previous nor the present statute requires that the warrants and ballots recite the statute. Third, the reference citation in

no way tends to mislead the voters; and in no way affected the results of the vote. Lastly, we are not at all satisfied that the district possessed an option regarding the method of voting upon the articles authorizing the issuance of bonds or notes. In *Frank E. Hancock, Attorney General, ex rels., George L. Atkins et als. v. Robert S. Fuller, Selectman et als,* (a case heard by Chief Justice Robert B. Williamson in early 1960, in Kennebec County Superior Court) it was decided by the Chief Justice (in his written findings and conclusions) that: "The questions in the instant case are ordered by the Legislature acting through the commission to be submitted to the voters of Farmingdale. Farmingdale is a 'secret ballot' town and it follows therefore that in my opinion the questions must be voted upon by secret ballot." The decree was dated March 9, 1960. The questions voted upon in the instant matter were of the same tenor as those which were before the court in the case cited immediately above. *20 M.R.S.A. § 215, 4; 20 M.R.S.A. § 225, 3, A.* In closing, we cite the entire decision in *Lewis v. City of Port Angeles,* (Wash.), 34 P. 914, 915:

> "Stiles, J. The only objection made to the issuance of the proposed bonds being that the ordinance adopting the system of electric lighting for the respondent city recited that it was passed in pursuance of the act of March 26, 1890, as amended by the act of March 9, 1891, when in fact, if passed at all, it must have been passed in pursuance of the act of February 10, 1893, the judgment is affirmed. *The recital in the ordinance was surplusage,* and the act of 1893 was, under the decision in Seymour v. City of Tacoma, 33 Pac. 1059, (decided June 2, 1893,) *a mere re-enactment of the former acts,* with an immaterial amendment covering the purchase of the existing light or water plants." (Emphasis ours.)

Thus, if the notes are executed and if the School Administrative District expends the moneys for a capital outlay purpose, such expenditure would not be rendered invalid by the given facts; and State aid should be paid pursuant to *20 M.R.S.A. § 3518.*

JOHN W. BENOIT
Assistant Attorney General

August 4, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Roadside Advertising Signs

FACTS:

In your memorandum relating to the above, the question is raised as to whether or not roadside advertising signs located on private property are taxable as personal property, or as real estate.

ANSWER:

Roadside advertising signs, on standards, posts, or other support of that nature attached upon land, would be taxable as real estate.